CITY OLERK

### BEFORE THE CITY COUNCIL CITY OF SEATTLE

In the Matter of the Application of	)	CF 308884
SEATTLE CHILDREN'S HOSPITAL	)	DIRECTOR'S RESPONSE TO APPEALS OF LAURELHURST COMMUNITY CLUB,
for approval of a Major Institution Master Plan.	) ) )	ET AL

When a Major Institution applies for a Master Plan, the Director of the Department of Planning and Development (DPD) is charged with making a determination "whether the planned development and changes of the Major Institution are consistent with the purpose and intent of [SMC Chapter 23.69], and represent a reasonable balance of the public benefits of development and change with the need to maintain livability and vitality of adjacent neighborhoods." In this case, the Director determined that Children's proposed Major Institution Master Plan (MIMP) was consistent with SMC Chapter 23.69 and that, as appropriately mitigated, approval of the MIMP would foster that reasonable balance. The Director's Report recommended approval of Children's MIMP, with several conditions. The Citizen's Advisory Committee (CAC) convened to review Children's MIMP also recommended approval, with its own conditions.

<sup>1</sup> SMC 23.69.032(E)(2).

<sup>3</sup> *Id.*, p. 44.

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ORIGINAL

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<sup>&</sup>lt;sup>2</sup> Director's Report, Exhibit 9, p. 15-44, analyzing all of the considerations required by SMC 23.69.032(E).

<sup>&</sup>lt;sup>4</sup> CAC Report, Exhibit 8.

However, the City of Seattle Hearing Examiner (Examiner) recommended that the City Council deny Children's MIMP, while at the same time recommending that if the Council decides to approve the MIMP, it should be approved as modified and subject to 43 conditions and that Council should approve rezones for the Major Institution Overlay height districts as illustrated in Exhibit 93.

Several parties, including the Director, appealed the Examiner's denial recommendation. Several other parties, including the Laurelhurst Community Club (LCC), appealed the Examiner's alternate recommendation to adopt the MIMP as modified and subject to conditions and to approve rezones. In this response, the Director primarily responds to the appeal filed by LCC, but intends that response to also address the appeals filed by Hawthorne Hills Community Council (HHCC) and the Seattle Community Council Federation (SCCF), which agree with and defer to LCC's appeal. The Director will separately and briefly address the appeal filed by the Seattle Displacement Coalition and the Interfaith Task Force on Homelessness (Displacement Coalition).

In sum, the Director urges Council to deny the appeals filed by LCC, HHCC, SCCF, and Displacement Coalition, and approve Children's Major Institution Master Plan, because it is consistent with the City's Major Institution regulations, SMC Chapter 23.69.

#### **ARGUMENTS**

### A. Council should approve Children's Major Institution Master Plan, because it complies with SMC Chapter 23.69.

In its appeal, LCC urges Council to follow the examiner's recommendation to deny Children's MIMP. However, as the Director noted in her appeal to Council, the Examiner's recommendation that Children's MIMP be denied reveals a fundamentally flawed understanding

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of the master planning process, and of the relationship between the Comprehensive Plan to the Major Institution regulations in the Land Use Code and use of the SEPA Land Use Policy.

LCC's appeal contains one correct statement: that the intent of an MIMP is to "balance the needs of the Major Institution to develop facilities for the provision of health care or educational services with the need to minimize impact of Major Institution development on surrounding neighborhoods." To foster that balance, Seattle Municipal Code (SMC) 23.69.032 provides an extensive process for the approval or denial of a Master Plan. That process includes significant community involvement through a Citizen Advisory Committee (CAC) and rigorous, detailed evaluation by DPD, as well as review by the Examiner. But LCC's appeal wrongly asserts that the Examiner's review and recommendation is the "culmination" of the Major Institution process. The culmination of the process is in the Council's actual decision on a Major Institution's proposed master plan.

The Major Institution Code assigns no weight or deference to the Examiner's recommendation. In this case, the Council should not follow that recommendation, as the Examiner erred by not considering the proposal's consistency with the purpose and intent of the Major Institution Code, and by relying on the City's Urban Village goals and policies to tip the balance between Children's needs and the need to minimize impacts to the surrounding neighborhood, thus rendering the process meaningless.

As conditioned, Children's proposed MIMP is consistent with the purpose and intent Major Institution Code as set forth in SMC 23.69.002, as well as the specific requirements detailed in SMC 23.69.032(E). Rather than replicate the analysis that led to DPD's consistency determination; the Council is referred to the Analysis, Recommendation and Determination of

<sup>&</sup>lt;sup>5</sup> SMC 23.69.025.

the Director at p. 15-44. As for the Examiner's reliance on the City's Urban Village Strategy, nowhere in the Code is a MIMP required to be consistent with the Comprehensive Plan's Urban Village policies and goals. In fact the Comprehensive Plan expressly provides:

The Plan will **not be used** to review applications for specific development projects **except when reference to this Comprehensive Plan is expressly required** by an applicable development regulation." (emphasis added).<sup>6</sup>

The only reference to the Comprehensive Plan in the Major Institution Code requires the Director to include an assessment in her report regarding the extent to which the Major Institution will address the goals and applicable policies under the Education and Employability and Health in the Human Development Element. Therefore, the Examiner erred in using the Comprehensive Plan's Urban Village policies and goals to review Children's MIMP. Lack of consistency with some of these policies is not grounds for denial of the MIMP.

Regardless, LCC's arguments are repeatedly based on the fundamentally incorrect assumption that the MIMP must comply with the Urban Village and Land Use Elements of Seattle's Comprehensive Plan.<sup>8</sup> Although the Examiner was persuaded by LCC's unfounded argument, Council should not fall into the same trap.

It is possible that the Examiner's confusion arose from the fact that under SEPA – unlike under SMC 23.69 – consistency with the goals and policies of the Comprehensive Plan *does* need to be considered. As a result, the Revised FEIS, which was deemed adequate by the Examiner, extensively analyzed the MIMP's consistency with the Urban Village Element and the

<sup>&</sup>lt;sup>6</sup> See Testimony of Cliff Portman and Testimony of Katy Chaney, July 15, 2009, stating that the Comprehensive Plan is only applied to individual development projects when expressly required by the Seattle Municipal Code.

<sup>7</sup> SMC 23.69.032(E)(3)

<sup>&</sup>lt;sup>8</sup> LCC Appeal, p. 11-12.

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23 RFEIS, p. 3.7-10 - 3.7-33. <sup>12</sup> Seattle's Comprehensive Plan, "Application of Comprehensive Plan," January 2005, p. xi.

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Land Use Element of the Comprehensive Plan. However, SEPA consideration is substantially different that what is required by SMC 23.69.9

In addition to the fact that LCC is simply wrong, LCC clearly exaggerates the inconsistency with the Urban Village and Land Use goals and policies. Specifically, in its appeal LCC only identifies 6 goals and policies that the MIMP was found to be inconsistent with, yet ignores all of the policies it was found to be consistent with. For example, the MIMP was found to be consistent with UV36, which encourages the protection of single-family areas, both inside and outside of urban villages and allowing limited multifamily, commercial, and industrial uses outside of villages to support the surrounding area or to permit the existing character to remain. 10 Nothing in the Comprehensive Plan prohibits a Major Institution from being located or expanded outside an Urban Village. Moreover, Children's MIMP is consistent with a significant number of Land Use goals and policies, including LUG8, LUG9, LU72, LUG 31, LUG32, LUG 33, LUG 34, LU180, LU182, LU184, LU185, LU 187, LU188, LU189, LU192, LU194, LU195, LU196, LU197, LU198, LU200, LU201, LU202, and LU203, 11 which LCC failed to acknowledge.

The Comprehensive Plan expressly provides that "Plan policies do not exist in isolation, and must be viewed in the context of all potentially relevant policies..."<sup>12</sup> Although the MIMP is not required to be consistent with the Urban Village and Land Use Elements of the Comprehensive Plan, the Council should be aware that it is not as inconsistent as LCC would have Council believe. Because Children's MIMP is not required to be consistent with the City's

<sup>&</sup>lt;sup>9</sup> DPD's Exhibit R-24 (chart showing the relationship between the Comprehensive Plan to the Land Use Code and to

<sup>&</sup>lt;sup>10</sup> Seattle Children's Hospital Major Institution Master Plan Revised Final EIS (RFEIS), p. 3.7-12.

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Urban Village goals and policies (except for the Human Development Element as described above), Council should not consider any of LLC's arguments to the contrary.

# B. The MIMP's proposed 2.4 million gross square feet of development area is appropriate.

LCC essentially argues that Children's MIMP is too big. However, the MIMP is consistent with SMC Chapter 23.69, which requires development area to be tied to the institution's need. Children's has established that the proposed development area is necessary to accommodate Children's predicted need and LCC has failed to show that a smaller development area is necessary to minimize the impact on surrounding neighborhoods.<sup>13</sup>

LCC alleges that Children's refused to study any development alternative that would result in less than 2.4 million gross square feet, but fail to acknowledge that SMC 23.69.030(E) does not *require* a description of alternative development proposals if an Environmental Impact Statement is prepared, as was the case here. A wide range of alternatives *were* analyzed in the Draft, Final, and Revised Final EIS for Children's MIMP. In addition, the MIMP itself clearly explains the incremental phases of development that may or may not occur over the next 20 years – only if all 4 phases are allowed and completed will the total development area reach the proposed 2.4 million gross square feet. Moreover, the Examiner's Condition No. 17 will ensure that development is consistent with Children's need:

Prior to issuance of any MUP for any project under Phase 2, 3 and 4 of the Master Plan, Children's shall provide documentation to the Director and the SAC clearly demonstrating that the additional construction requested is needed for patient care and directly

<sup>3</sup> HE Findings and Recommendation, Conclusion 6, p. 23.

<sup>15</sup> Final Master Plan for Seattle Children's Hospital, p. 66.

<sup>&</sup>lt;sup>14</sup> SMC 23.69.030(E)(1) provides that "The development program component shall include the following: 1. A description of alternative proposals for physical development ...but only if an Environmental Impact Statement is not prepared for the master plan..." (emphasis added).

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related to supporting uses by Children's, including administrative support.16

The express purpose of Children's MIMP phasing plan is to "meet the hospital's growth needs predictably while minimizing development impacts to existing facilities and surrounding neighborhoods."<sup>17</sup> The Examiner properly concluded that "Children's has shown a projected statewide need for specialized pediatric care over the next 20 years sufficient to support the development area being requested in the proposed MIMP."<sup>18</sup> Requiring Children's to propose development alternatives less than 2.4 million gross square feet, alternatives that are insufficient to satisfy Children's projected need, would essentially create a MIMP that would not be adequate long-term and would necessitate a new MIMP much sooner.

LCC also alleges that the Examiner's Condition No. 1 requiring Children's to limit total development to 2.4 million gross square feet is inconsistent with her conclusion regarding the "inappropriate size and scale of the proposed MIMP," but the Examiner made no such conclusion. In fact, the Examiner concluded that the development area was appropriate and simply clarified how that area should be calculated; Specifically, concluding that only parking – not mechanical space – should be excluded from the total gross floor area, and that a FAR of 1.9 should be approved, only excluding rooftop mechanical equipment, any parts of structures below grade, and below-grade parking.<sup>20</sup> LCC inappropriately misrepresented the Examiner's recommended condition.

<sup>&</sup>lt;sup>16</sup> HE Findings and Recommendation, Condition No. 17, p. 33.

<sup>&</sup>lt;sup>17</sup> Final Master Plan for Seattle Children's Hospital, p. 66.

<sup>&</sup>lt;sup>18</sup> HE Findings and Recommendation, Conclusion No. 6, p. 23. <sup>19</sup> LCC Appeal, p. 11.

<sup>&</sup>lt;sup>20</sup> HE Findings and Recommendation, Nos. 14-17, at p. 24-25. Note the Director's appeal, p. 4, encouraging the Council to amend the Examiner's Condition No. 2 to exclude all parking, not just below-grade parking, in order to be consistent with Condition No. 1.

In addition to LCC's misrepresentation regarding Examiner's recommended Condition No. 1, LCC's argument that the 2.4 million gross square feet development area is too big is based on mischaracterizations of the surrounding neighborhood, the proposed expansion, and the pertinent development regulations. For example, LCC consistently describes the surrounding neighborhood as "a primarily single family neighborhood" or a "single-family area," and neglects the fact that Children's is bordered on the North and East by multi-family zoning, then neighborhood commercial zoning, as well as less than a mile away from a regional-drawing shopping center, University Village, and the University of Washington. Also, there is no support for LCC's allegation that "the cumulative impact of the proposed expansion ... is significant." In fact, the EIS, as approved by the Examiner, found that there would be no significant land use impacts and any cumulative impacts would not be significant when viewed in the context of existing and proposed future land uses. In addition, LCC claims that approval of Children's MIMP will have precedential effects, but fails to acknowledge – as the Examiner did – that "the Council maintains significant control of future MIO expansions." 23

Lastly, LCC claims that it "has <u>not</u> been determined"<sup>24</sup> that the full expansion is needed. However, as discussed above, the Examiner clearly concluded that there *was* a need for the full 2.4 million gross square feet of development.<sup>25</sup> There is no basis for LCC to recommend that Council specify a reduced gross square footage, because the RFEIS, as approved by the Examiner, concludes that any significant impacts of development have been mitigated.<sup>26</sup> Limiting the allowed development area, as suggested by LCC, would be inconsistent with the

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<sup>&</sup>lt;sup>21</sup> Seattle Children's Hospital Major Institution Plan Final EIS, 1-2

<sup>&</sup>lt;sup>22</sup> RFEIS, Table 1-4, p. 1-31, and Table 1-5, p. 1-33.

<sup>&</sup>lt;sup>23</sup> HE Findings and Recommendation, Conclusion No. 12, p. 24.

<sup>22 | &</sup>lt;sup>24</sup> LCC, p. 17.

<sup>&</sup>lt;sup>25</sup> HE Findings and Recommendation, Conclusion 6, p. 23.

<sup>&</sup>lt;sup>26</sup>RFEIS, p. 3.7-38 ("No significant impacts to land use have been identified and no mitigation measures are required.").

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<sup>28</sup> HE Findings and Recommendation, Conclusion No. 23, p. 25 and Recommendation No. 3, p. 30.

# C. <u>Height limits of 140 and 125 feet on limited portions of Children's campus are appropriate.</u>

LCC consistently claims that a height of 160 feet should not be permitted. First of all, the Examiner *never* approved or recommended building heights of 160 feet. Instead, she determined that the CAC's modification to the proposed heights shown in the MIMP were appropriate, recommending that if the MIMP is approved, the maximum heights should be 140 feet and 125 feet, as shown on Exhibit 93.<sup>28</sup> SMC 23.69.004 provides that "[a]ll land within the Major Institution Overlay (MIO) District shall be designated with one (1) of the following height limits...," including MIO-160 with a 160 foot height limit, and other designations up to a height limit of 240 feet. Although an MIO height limit of 160 would be adopted for the MIMP, *no* development over 140 or 125 feet, depending on the location, would be allowed if Council also adopts the recommended condition.<sup>29</sup>

LCC's claim that the heights should be limited to 105 is arbitrary, not supported by the record, and not sufficient to accommodate Children's need. Just because 140 and 125 feet height limits are higher than the heights currently allowed for other major institutions outside urban villages, and higher than the heights in the existing MIO and the surrounding area, does not mean

<sup>&</sup>lt;sup>29</sup> See Exhibit 81, Slide 5, showing that Children's proposes allowed height of 140 feet for only 12.3% of its campus and allowed height of 125 feet for only 7.43%.

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30 Exhibit 26, slide 29.

they are not allowed here. Further, Children's has agreed to a 50 foot height limit in the area 80 feet from 40<sup>th</sup> Ave. NE and 30 feet from Sand Point Way.<sup>30</sup> Although there would be some unavoidable height, bulk, and scale impacts from the development, both the Director and the CAC agree that the MIO-160, allowing development of 140 and 125 feet, was appropriate. Contrary to LCC's repeated assertions, there is no requirement that Children's MIMP be the same as other MIMPs.

In addition, LCC is incorrect regarding the MIMP height limits consistency with SMC The proposed 140 and 125 feet height limits are consistent with SMC 23.34.008. 23.34.008(E)(4), which allows height greater than 40 feet outside an urban village if that height limit is consistent with, among other things, "a major institution's adopted master plan." Although 140 and 125 feet height limits are not consistent with Children's current adopted master plan, they will be consistent at the time Council considers a rezone of the property, because a rezone will be adopted only if the new MIMP is adopted as well. If Council adopts LCC's erroneous interpretation of SMC 23.34.008(E)(4), no MIMP could ever include higher heights than the underlying zoning or the height allowed by an existing MIMP, which is an unworkable result. Although LCC claims that the Examiner agreed with their interpretation, the Examiner's recommendation that "[i]f Council approves the Master Plan, as modified, the Council should also approve rezones for the Major Institution Overlay height districts..." is directly in line with the Director's interpretation. The Examiner properly agreed that if the MIMP is approved, rezones allowing heights of 140 and 125 should also be approved – thus, implicitly agreeing that heights over 40 feet are allowed if consistent with the new MIMP.

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31 LCC Appeal, p. 19.

<sup>32</sup> HE Findings and Recommendation, Finding No. 6, p. 3.

33 LCC Appeal, p. 23.

LCC claims that 140/125 foot high buildings would be inconsistent with all nearby development,<sup>31</sup> but fails to acknowledge that there is a nonconforming 100 foot tall condominium located across Sand Point Way NE.32 Both DPD and the CAC concluded that, with the proper setbacks, location of the buildings, and landscaping, the impacts of the height would be sufficiently minimized.

As discussed above, the MIMP does not have to be consistent with the Urban Village goals and policies. As a result, LCC's repeated reference to the fact that Children's is located outside an urban village are meaningless. Higher MIO heights of 240 feet have been permitted and it is irrelevant that it has been permitted only in urban centers.

Height, bulk, and scale impacts have been properly balanced with Children's need to expand. Although there will be impacts, they have been mitigated to a proper extent. LCC has provided no evidence that an MIO 105 will cause lesser height, bulk and scale impacts or that it is sufficient to satisfy Children's need and thus, Council has no grounds for reducing the proposed height limits.

### D. The proposed boundary expansion, including expansion to the Hartmann property, is appropriate.

LCC's claim that the proposed boundary expansion is improper is, again, premised on several erroneous characterizations. First, LCC improperly describes the Hartmann property as Although it is zoned Lowrise 3 (L3), that property has been used for non-"residential." 33 residential purposes, as medical offices, since the 1950's and will likely continue to be used for non-residential purposes whether or not the MIMP is approved.<sup>34</sup> In addition, the property

<sup>&</sup>lt;sup>34</sup> HE Findings and Recommendation, Conclusion 12, p. 24; Testimony of Scott Ringgold, March 2, 2009.

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immediately South of the Hartmann property is zoned Neighborhood Commercial (NC), so it is disingenuous to suggest that this area is "well-established for residential use."<sup>35</sup>

Second, LCC continues to describe the expansion of the MIO to the Hartmann property as "leapfrogging," which is simply incorrect. Looking at the intersection of 40<sup>th</sup> Ave. NE and Sandpoint Way NE, the Hartmann property is adjacent to the rest of the property within the MIO boundary.<sup>36</sup> SMC 23.34.124(B)(2) provides that "properties separated by only a street, alley or other public right-of-way shall be considered contiguous,"<sup>37</sup> so LCC's attempt to mislead by drawing attention away from the intersection at 40<sup>th</sup> Ave. and Sandpoint Way is not supported by law.<sup>38</sup> Likewise, the terms "sandwiched" and "isolated" are inaccurate to describe the nature of the proposed boundary expansion. As shown on Exhibit 4, the Final Master Plan, at p. 12, Figure 2, however, the Hartman Property is not "sandwiched" or "isolated" - in fact, under the proposed MIMP, it is directly across the street from the main campus.

Although LCC claims that the proposed MIO expansion is "irrational," they provide no evidence in the record to support that proposition. And in fact, the expansion is rational, because it would help reduce the heights required on the main expanded campus, as acknowledged by the Examiner.<sup>39</sup>

LCC yet again misrepresents the nature of the boundary expansion by failing to acknowledge that the Hartmann site is separated from the surrounding neighborhood by both an elevation difference of approximately 35 feet and a significant lateral distance, including the

35 LCC Appeal, p. 25. <sup>36</sup> See, e.g., Exhibit 9, p. 58-59.

<sup>39</sup> HE Findings and Recommendation, Conclusion No. 9, p. 23.

See Testimony of Scott Ringgold, March 2, 2009 ("With the purchase of the Laurelon property, Hartman is contiguous"). <sup>38</sup> Director's Report, Exhibit 9, p. 59.

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to the west of the trail, and the 25-foot rear setbacks.<sup>40</sup>

100-foot right of way width of the Burke-Gilman Trail, the 25-foot Blakely Street right-of-way

It does not matter that Children's did not purchase the Hartmann Property until 2000, because the property has been continually in use as a medical office since the mid-1950's, since Children's moved to its current site. LCC failed to identify any support for their proposition that Council deliberately established a dividing line between commercial and lowrise multifamily zoning along the west side of Sand Point Way NE and, regardless, there are other instances of uses in that area, in addition to Children's, that do not conform to such a "dividing line."

E. The Citizen Advisory Committee (CAC) concluded that the height, bulk, and scale of the proposed development – including the 2.4 million square feet of development area, the 140 & 125 feet height limits, and the boundary expansion to include the Hartmann property – were appropriate, and recommended approval of the MIMP. 43

In recommending denial of Children's MIMP, the Hearing Examiner improperly disregarded the CAC's recommendation, which concluded that the height, bulk and scale of the proposed development, as conditioned, were appropriate.<sup>44</sup> The CAC held 26 public meetings and reviewed a substantial volume of public comment – primarily focused on overall height, bulk and scale of the proposed expansion - in making its determination to recommend approval of Children's MIMP, and this recommendation should not be ignored lightly. Although LCC purports to represent the interests of the neighborhood community surrounding Children's,

<sup>&</sup>lt;sup>40</sup> HE Findings and Recommendation, Finding No. 80, p. 14 ("...steep slope and the Burke Gilman Trail ... should provide adequate screening."); CAC Final Report, p. 48 and Figure 37, p. 49.

<sup>41</sup> Testimony of Scott Ringgold, March 2, 2009.

<sup>&</sup>lt;sup>42</sup> HE Findings and Recommendation, Finding No. 6, p. 3 ("To the south of the Hartmann site is Neighborhood Commercial 2 zoning with a 40 foot height limit (NC2-40) developed with a nonconforming 100-foot-high condominium building.")

 <sup>43</sup> CAC Final Report, Exhibit 8.
 44 CAC Final Report, Exhibit 8.

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several members of that community have expressed claims that their interests were *not* in line with LCC. The CAC, which was comprised of a diverse group of members from the community, experts in the field, and those familiar with Children's, impartially considered the MIMP and concluded that it appropriately balanced the needs of Children's with the need to minimize impacts to the surrounding neighborhoods and Council should give their recommendation substantial consideration.

# F. Vehicle Access from 40<sup>th</sup> Avenue NE is appropriate to help mitigate any adverse traffic impacts to the surrounding neighborhood.

LCC claims that the MIMP should not allow vehicle access from two driveways on 40th Ave. NE. However, there is substantial evidence in the record that this configuration will cause significantly less of an impact than the alternative of allowing an access point on Sand Point Way. Again, LCC's claim is based on a misrepresentation: LCC refers to 40th Ave. NE as a "residential street" used widely by residents and school children and buses, yet also describes it as a "major route" both for neighborhood residents and emergency response vehicles. In addition, there is *no* evidence in the record that emergency response time would be impacted by the MIMP and the same argument – that the access point would cause delay – could be made even if the access point were located on Sand Point Way, rather than 40th Ave. NE.

Likewise, there is no evidence in the record to support LCC's assertion that adding vehicular access to Children's via 40<sup>th</sup> Ave. NE will be a safety concern to children on bikes and

<sup>&</sup>lt;sup>45</sup> See, e.g., appeal filed by Dixie and Steve Wilson.

<sup>&</sup>lt;sup>46</sup> Appeal letter by Catherine J. Hennings, August, 25, 2009. p. 1.

<sup>&</sup>lt;sup>47</sup> HE Findings and Recommendation, Finding No. 97 and Finding No. 100, p. 17; Testimony of Kurt Gahnberg, March 2, 2009.

<sup>&</sup>lt;sup>48</sup> LCC Appeal, p. 30.

<sup>49</sup> FEIS, p. 3.10-40. <sup>50</sup> Exhibit 81, Slide 28.

walking in the neighborhood. In fact, to the contrary, the FEIS concluded that "Development of the alternatives is not expected to degrade pedestrian safety."

The only legitimate reason LCC provides for not to allowing the two access points is that the neighborhood does not want them; however, the neighborhood would be equally unhappy with an access point – and the resulting traffic delays – on Sandpoint Way. The decision to allow the 40<sup>th</sup> Ave. NE access points appropriately balances Children's need to accommodate more traffic onto its campus, while minimizing the impacts to the surrounding neighborhood.

# G. There is no need to require the Southwest Parking Garage to be below-grade, because the existing height limit, setback and landscape requirements are sufficient to minimize the impacts of the garage.

First, this is a new issue that was not substantially addressed by the Examiner. Second, the proposed 40 foot setbacks around the Southwest garage at 45<sup>th</sup> and 40<sup>th</sup> Ave. NE and, even more so, the conditions recommended by the Examiner requiring even greater setbacks, are sufficient to minimize the height, bulk, and scale impacts of the garage. And again, LCC misrepresents the facts in this case by failing to acknowledge that the garage, as proposed in the MIMP, is actually half-way below-grade. Only 3.5 of the 6.5 story garage will be above ground.<sup>50</sup>

Further, there is no evidence in the record to show whether their recommendation for a fully-below-grade parking garage is even feasible. For example, there is a complete lack of information on the subsurface soil and groundwater conditions. Just because underground parking garages have been successful in other situations does not establish that it is necessary or even feasible here. The Director maintains that the MIMP height limits, setbacks, and landscaping requirements are adequate to minimize any impacts from the garage. There is no

basis for the Examiner's recommendation for increased setbacks or LCC's recommendation for an underground garage and Council should approve the garage as proposed in the MIMP.

## H. The Condition requiring Children's to pay \$5 million for replacement of housing is adequate.

The appeal filed by the Displacement Coalition focuses exclusively on the issue of whether Children's has satisfied its obligation to provide comparable replacement housing, as required by SMC 23.34.124(B)(7), which provides that:

New or expanded boundaries shall not be permitted where they would result in the demolition of structures with residential uses or change of use of those structures to non-residential major institution uses unless comparable replacement is proposed to maintain the housing stock of the city.

Children's has agreed to provide \$5 million for replacement housing, based on the proposed demolition of the 136 unit Laurelon Terrace. Although LCC and the Displacement Coalition disagree, this \$5 million agreement between Children's and the Seattle Office of Housing complies fully with Children's obligation to provide comparable replacement housing.

Contrary to the interpretation of the Displacement Coalition, SMC 23.34.124(B)(7) does not require a formulaic approach to replacement housing, nor does it prohibit allowing replacement housing in the form of projects including public funding.<sup>51</sup> Both Adrienne Quinn, the Director of the Seattle Office of Housing, and Peter Steinbrueck, former Council Member, who testified regarding the City's practice of implementing SMC 23.34.124(B)(7), agree that a great deal of flexibility is used to accomplish the replacement of housing.<sup>52</sup>

<sup>&</sup>lt;sup>51</sup> Testimony of Adrienne Quinn, July 14, 2009 and Testimony of Peter Steinbrueck, July 15, 2009. <sup>52</sup> *Id*.

23 | 56 Id. 57 Id.

Further, Scott Ringold testified that "the concern [DPD has] is the causing of this replacement housing, that it happen because of the mitigation." Mr. Steinbrueck testified that, in his experience, Council's concern would be, "is there reasonable expectation that the housing will be built and the housing is equitable," noting also that Council would give substantial deference to the experts, such as the Office of Housing, in making its determination whether replacement housing was adequate to satisfy the code.<sup>54</sup>

Ms. Quinn testified that it is the City's practice to fulfill the replacement housing requirement by 'gap funding' to develop as much low and moderate income housing as possible.<sup>55</sup> Without gap funding, many such projects would not go forward, including the 52-unit Solid Ground project being funded as part of Children's replacement housing agreement.<sup>56</sup>

According to Ms. Quinn, the City considers five factors in determining what is comparable housing, including 1-for-1 replacement, general affordability, general size, location, and long term affordability. In the present case, the City also considered the fact that Children's will pay the owners of the 136 Laurelon Terrace units nearly twice market value for their units, allowing those individuals to purchase some of the excess housing stock throughout the City; although not necessarily direct replacement housing, Children's purchase of the Laurelon Units is an added benefit to the City.<sup>57</sup> The City does *not* interpret comparable to mean "identical". Ms. Quinn explicitly testified that "we do not believe that a 1940's garden style apartment is what would be considered comparable [to the demolished Laurelon Terrace units]. I would say

<sup>&</sup>lt;sup>53</sup> Testimony of Scott Ringold, July 14, 2009.

<sup>&</sup>lt;sup>54</sup> Testimony of Peter Steinbrueck, July 15, 2009.

Testimony of Adrienne Quinn, July 14, 2009.Id.

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Testimony of Adrienne Quinn, July 14, 2009 (emphasis added).
 Displacement Coalition appeal, p. 7.

that would be identical and the code does not require identical replacement of the housing stock."58

The Displacement Coalition claims that Children's should be required to pay the full replacement cost of the housing it will demolish, \$221,609 per unit.<sup>59</sup> However, this is not supported by any evidence in the record and not required by the code. As explained by Ms. Quinn, what is required is that the housing stock be maintained – it does not specify how this is accomplished. Here, Children's paid \$600,000 for 52 replacement units through gap funding of the Solid Ground project near Children's, on Sandpoint Way. Although ordinarily the City estimates it costs \$50,000 in gap funding per unit, here that cost was less. Through negotiating in this way, the City's Office of Housing may be able to stretch Children's \$5 million into significantly more replacement units than required by code and this should be encouraged. The City is in no way using public funds in an improper way and, in fact, is using private funds to accomplish a significant public benefit.

Although Seattle Displacement Coalition claims that the Examiner's recommendation regarding replacement housing is insufficient, they cite no authority for that proposition. Credible testimony by the City regarding how the code is interpreted and ordinarily implemented establish that the \$5 million dollar payment by Children's is sufficient to satisfy SMC 23.34.124(B)(7). In fact, according to Adrienne Quinn, her goal is to use Children's \$5 million payment to fund more than 136 units – "as many projects as possible" – which would exceed any code requirement. The Council should approve the agreement between Children's and the City for replacement housing, as recommended by the Examiner. 60

**DIRECTOR'S RESPONSE TO APPEALS - 18** 

<sup>&</sup>lt;sup>60</sup> HE Findings and Recommendation, Recommendation No. 20, p. 33.

### CONCLUSION

For the reasons stated above, the City Council should deny the appeals filed by Laurelhurst Community Club, the Seattle Community Council Federation, Hawthorne Hills Community Council, and Seattle's Displacement Coalition and the Interfaith Taskforce on Homelessness and approve Children's Major Institution Master Plan, with conditions.

DATED this 2 st day of September, 2009.

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### BEFORE THE CITY COUNCIL CITY OF SEATTLE

In the Matter of the Application of	) CF 308884
SEATTLE CHILDREN'S HOSPITAL	) ) CERTIFICATE OF SERVICE
for approval of a Major Institution Master Plan.	)
	)

I certify that on the 21st day of September, 2009, I sent copies of the following documents:

- 1. Director's Response to Appeals of Laurelhurst Community Club, et al.; and
- 2. Certificate of Service

6. Coalition of Major Institutions

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to the following parties by e-mail address listed below for that party:

- 1. Seattle Community Council Federation at <a href="mailto:rickbarrett@gmail.com">rickbarrett@gmail.com</a>
  2. Dixie & Steve Wilson; Laurelon Terrace at <a href="mailto:pbuck@bucklawgroup.com">pbuck@bucklawgroup.com</a>
  3. Seattle Displacement Coalition; at <a href="mailto:jvf4119@zipcon.net">jvf4119@zipcon.net</a>
  Interfaith Taskforce on Homelessness
  - 4. Catherine Hennings at cjhennings@gmail.com

    5. Seattle Children's Hospital at johnkeegan@dwt.com

and to the following parties by first class mail, by depositing the copies in the U.S. mail by 5:00 p.m., with proper postage affixed, at the post office address listed below.

- Seattle Community Council Federation c/o Rick Barrett, Vice President 1711 N 122<sup>nd</sup> Street Seattle, WA 98133
- Dixie & Steve Wilson
   Laurelon Terrace
   c/o Peter Buck
   The Buck Law Group
   2030 1<sup>st</sup> Ave., Suite 201
   Seattle, WA 98121

at walst@foster.com

**CERTIFICATE OF SERVICE - 1** 

ORIGINAL

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